



OFFICE OF THE DEPUTY COMMISSIONER - LEGAL MATTERS

LEGAL BUREAU BULLETIN

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**I. SUBJECT: SUMMARY OF “RAISE THE AGE” LEGISLATION
AND ITS IMPACT ON THE DEPARTMENT**

II. DISCUSSION

A. Introduction

The purpose of this Bulletin is to provide a detailed overview of the “Raise the Age” Law that goes into effect on **October 1, 2018** and its impact on the Department.

The law,¹ which amends various provisions of the Criminal Procedure Law, the Family Court Act, Penal Law, and other laws, increases the age of adult criminal responsibility in New York State to 17 on October 1, 2018 and to 18 a year later on October 1, 2019. Before the enactment of this law, New York’s age of adult criminal responsibility was 16. Someone who is “criminally responsible” is prosecuted in a criminal court, including the newly established “Youth Part” which is discussed further in this bulletin. Someone who is not criminally responsible is still accountable for their behavior, but will be brought before a court other than a criminal court (such as Family Court) and an adverse outcome will not be considered a conviction.

It is essential to note that juvenile arrest procedures for persons age 15 and younger **have not changed**. The procedures that uniformed members of the service (UMOS) have utilized continue to be in place. The “Raise the Age” Law’s primary focus is on the treatment of 16- and 17-year olds in the criminal justice system. It affects arrest processing, prisoner holding, custodial questioning and parental notifications for these specific age groups. **In most cases, however, UMOS will utilize the same rules and procedures that they have used regarding juveniles and now apply them to 16-year-old arrestees.**

¹ Chapter 59 of the Laws of 2017, Part WWW. This bulletin will focus on the impact of the law on 16-year-olds and will be updated the following year to address 17-year-olds.

B. Criminal Responsibility for 16-year-olds

Beginning October 1, 2018, a 16-year-old will only be criminally responsible for the below acts. This means they may be prosecuted in a criminal court for²:

- Felony;
- Vehicle and Traffic Law (VTL) Misdemeanor (such as reckless driving, DWI, leaving the scene of a personal injury incident, etc.);
- Violation;
- Traffic Infraction

A 16-year-old will not be criminally responsible for a misdemeanor (non-VTL) unless it is accompanied by a felony charge that is stemming from the **same** criminal transaction, or from a reduction or dismissal of the felony charge in exchange for a guilty plea on the misdemeanor. Consequently, 16-year-olds will be charged with juvenile delinquency where an act constituting a misdemeanor (non-VTL) has been committed on or after October 1, 2018.

C. Processing of 16-Year-Olds

1. The Importance of the Juvenile Crime Desk

When UMOS take enforcement action against a person who is 16-years-old on or after October 1, 2018, the charges will dictate how the 16-year old is to be processed. As a general rule, in all instances where UMOS take enforcement against a juvenile (including 16-year-olds on and after October 1, 2018) the Real Time Crime Center's Juvenile Crime Desk **must be consulted**. The Juvenile Crime Desk provides assistance and direction to UMOS who arrest or detain a juvenile and will provide guidance when making processing decisions.

2. Parental Notification

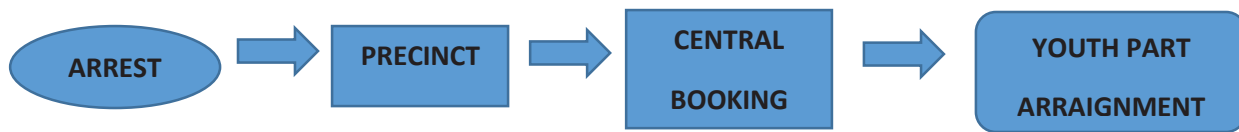
The "Raise the Age" Law amended both the Criminal Procedure Law³ and the Family Court Act⁴ to mandate that the same parental notifications required for arrests of all other juveniles also apply to 16-year-olds. Beginning October 1, 2018, whenever a police officer arrests a 16-year-old, a parent or guardian must be notified about the arrest and the location of the facility where the 16-year-old is being detained.

² Penal Law § 30.00(3).

³ See Criminal Procedure Law §§ 140.20(6), 140.27(5), 140.40(5).

⁴ See N.Y. Fam. Ct. Act § 305.2(3).

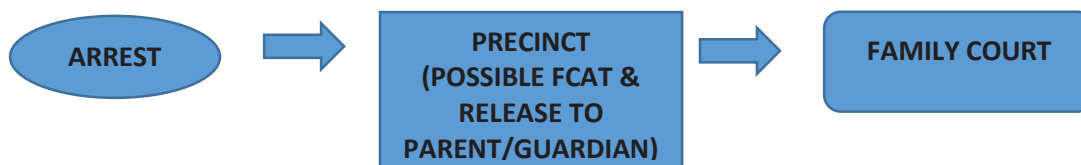
3. Felony Arrests - New Youth Part and Adolescent Offender Status⁵



One of the most significant developments in the “Raise the Age” Law was that it created a new criminal court, known as the Youth Part. This court will handle the flow and intake of 16-year-old felony cases as well as all Juvenile Offender cases. Juvenile Offender status will continue to be applied to 13-, 14-, and 15-year-olds charged with specified felonies. A 16-year-old charged with **any felony committed on or after October 1, 2018** will be designated as an **Adolescent Offender**.

The adolescent offender designation is a new classification, separate and apart from Juvenile Offender status, and it applies **only** to 16-year-olds. In most boroughs, the Youth Part will be held in Supreme Court during business hours and in the evening will be convened in Criminal Court. All felony cases involving 16-year-olds will originate in the Youth Part, but if certain conditions are met⁶, the case may be transferred or removed to Family Court after arraignment.

4. Misdemeanor Arrests - Family Court and Juvenile Delinquency⁷



⁵ The diagram above shows the basic arrest process for adolescent offenders and juvenile offenders during week-day business hours on and after October 1, 2018. Youth Part processing varies during non-business hours and on the weekends. UMOS are reminded to consult the Juvenile Crime Desk on proper processing.

⁶ See Criminal Procedure Law § 722.21(4)-(5). The new law permits the transfer of cases where the defendant is charged with a “non-violent” felony. This includes class A felonies from Penal Law Article 220 (drug offenses), felonies not itemized in Penal Law § 70.02 or those specified as Juvenile Offender offenses in the Criminal Procedure Law. Youth Part will automatically transfer these cases to Family Court following arraignment unless the District Attorney demonstrates that extraordinary circumstances exist to prevent transfer. Additionally, violent felonies, such as class A felonies (except in Penal Law Article 220) or those defined in Penal Law § 70.02, are eligible for removal to Family Court. The Court and the prosecution must consider a variety of factors prior to removal, and the District Attorney can prevent removal by demonstrating, by one or more of the following, by preponderance of evidence that the defendant caused a “significant physical injury,” the defendant displayed a firearm, shotgun, rifle, or deadly weapon; or the defendant unlawfully engaged in sexual conduct or sexual contact. See Criminal Procedure Law § 722.23(2)-(3).

⁷ The diagram above shows the basic arrest process for juvenile delinquents during week-day business hours. Family Court processing varies during non-business hours and on the weekends. UMOS are reminded to consult the Juvenile Crime Desk on proper processing.

In order to accommodate 16-year-olds charged with misdemeanors (except VTL misdemeanors), the definition of a **juvenile delinquent** was expanded in the Family Court Act to apply to persons over 7 years of age and **less than 17 years of age** who commit an act that would constitute a crime if committed by an adult.⁸ A 16-year-old charged with a misdemeanor (non-VTL) committed on or after October 1, 2018 will have his/her case adjudicated in Family Court as a juvenile delinquent.

In processing a juvenile delinquency arrest, the Family Court Act permits eligible juveniles to be released at a police facility through the issuance of a Family Court Appearance Ticket (FCAT).⁹ Beginning October 1, 2018, 16 year-olds who are charged as juvenile delinquents may receive an FCAT, if eligible. In all cases, where a 16-year-old receives an FCAT, he/she may only be released to the custody of a parent/guardian, lawful custodian, or a responsible adult relative by evidence of identity and relationship to him/her.¹⁰ This is the same process that applies to all other juvenile delinquents.

UMOS should review Patrol Guide Section 215-12, *Personal Recognizance Juvenile Delinquent*, in order to determine a 16-year-old juvenile delinquent's eligibility for an FCAT.

5. VTL Misdemeanors, Violations, and Traffic Infractions

As mentioned previously, 16-year-olds maintain adult criminal responsibility for VTL misdemeanors, **all** violations, and traffic infractions and thus may be prosecuted in Criminal Court. UMOS, however, may still use discretion to address these offenses with a criminal, civil, and traffic summons or a Juvenile Report, where applicable. In most cases, the "Raise the Age" Law preserves this discretion.

For example, 16-year-olds can continue to receive criminal court summonses for offenses that are classified as violations, such as disorderly conduct or unlawful possession of marijuana in the Penal Law.¹¹ Most moving violations are classified as traffic infractions in the VTL and NYC Traffic Rules. Thus, 16-year-old motorists may continue to receive moving summonses ("B summonses") returnable to the Traffic Violations Bureau. Additionally, where appropriate, they may continue to receive criminal court summonses for pedestrian offenses in the VTL and NYC Traffic Rules that are classified as traffic infractions.¹²

A 16-year-old who has been charged with a VTL misdemeanor will have their case adjudicated in Criminal Court. If eligible and where appropriate, criminal court summonses and/or desk appearance tickets may be issued for these offenses.

⁸ See N.Y. Fam. Ct. Act § 301.2(1).

⁹ *Id.* at §§ 305.2(4)(a), 307.1.

¹⁰ *Id.*

¹¹ 16-year-olds maintain criminal responsibility for *all* violations. This includes violations found in the Penal Law, but also other bodies of law such as the Administrative Code and NYC Parks Rules. Members of the Service are reminded to comply with Patrol Guide Section 209-33. The summoning officer should attempt to notify a parent or guardian when issuing a criminal court summons to a 16- or 17-year-old.

¹² Note that the Traffic Violations Bureau maintains jurisdiction over infractions related to traffic, except those related to pedestrian offenses. N.Y. Veh. & Traf. Law § 225(1). Criminal Court maintains jurisdiction over traffic infractions that are pedestrian offenses. See Criminal Procedure Law § 10.30(a).

Additionally, the Department has now expanded the Juvenile Report System to 16-year-olds. Where a violation, other petty offense, or even a misdemeanor has been committed, a 16-year-old may be eligible to receive a Juvenile Report for such conduct. As always, UMOS should consult the Juvenile Crime Desk to determine whether a 16-year-old is eligible for a Juvenile Report.

It should be noted that, as a result of this law, **criminal court summonses can no longer be issued for misdemeanors (except VTL)** to 16-year-olds.¹³ Instead, an FCAT or Juvenile Report may be issued for these offenses, where eligible.

6. Multiple Charges

Both the Criminal Procedure Law and the Family Court Act provide two basic rules regarding a court's jurisdiction to adjudicate 16-year-olds charged with multiple crimes and offenses:

- Whether the crimes or offenses **arise out of the same transaction or occurrence**; and
- Generally, the highest criminal charge will determine the court returnable

The below chart demonstrates the returnable court based on a variety of charges.

CHARGE COMBINATION ¹⁴ FOR 16-YEAR-OLD ARISING OUT OF SAME TRANSACTION OR OCCURRENCE	RETURNABLE TO THE FOLLOWING COURT....
Felony + Any other offense	 Youth Part
Misdemeanor (non-VTL) + Misdemeanor (non-VTL)	 Family Court
Misdemeanor (non-VTL) + Violation/Infraction	 Family Court
VTL Misdemeanor + Violation/ Traffic Infraction	 Criminal Court
VTL Misdemeanor + Misdemeanor (non-VTL)	 Return to applicable court on one charge and DAT/FCAT/Summons on other charge

¹³ This would include, for example, misdemeanors found in the NYC Administrative Code, such as possession of an imitation pistol (AC § 10-131(g)) or Unlicensed Ticket Selling (AC § 20-551(a)(1)), as well as the Agriculture and Markets Law (concerning animals), Navigation Law, and the General Business Law.

¹⁴ This table assumes scenarios where a live arrest is taking place. It is not meant to foreclose the discretion UMOS have to utilize alternative enforcement options such as criminal, civil, and traffic summonses, DATs, FCATs, and juvenile reports, etc., where applicable, to address conditions.

D. Precinct Holding and Interrogation of 16-Year-Olds

Similar to other juveniles, 16-year-old arrestees must now be separated from adult arrestees prior to and during arrest processing. They are to be held in the command's juvenile room(s) approved by the Office of Court Administration (OCA). They will be housed with other juvenile prisoners in these rooms. Adolescent Offenders, Juvenile Offenders, and Juvenile Delinquents may all be transported together.

Several provisions of the Criminal Procedure Law and the Family Court Act were amended relating to the interrogation of juveniles.¹⁵ Essentially, the same rules regarding the interrogation of juveniles will now apply to 16-year-olds. Department policies regarding the electronic recording of custodial interrogations for juveniles must now apply to 16-year-old adolescent offenders and juvenile delinquents.

If it is necessary to question a juvenile (including a 16-year-old), then such questioning **must** take place in a squad video interrogation room¹⁶ or an OCA-approved juvenile room. A 16-year-old cannot be questioned unless he/she and a parent, or legal guardian, have been advised of the 16-year-old's *Miranda* rights.¹⁷

Miranda Warnings for Juvenile Interrogations (PD 244-1413) should be read while the parent or legal guardian is present. A juvenile may be interrogated if he/she waives his/her *Miranda* rights in the presence of the parent or legal guardian for his/her care. The parent/guardian does not have to separately waive the *Miranda* rights; they only need to be advised of such rights.¹⁸ However, if the parent or legal guardian objects to the questioning or requests an attorney for the juvenile, no questioning should occur even if the juvenile is willing to answer questions.

During a suppression hearing, when the court is determining if a juvenile should have been questioned and if the questioning itself was appropriate, the court will take into account if a parent or a legal guardian was present, and if not, how much effort was put into contacting the parent or guardian.

Nevertheless, there will certainly be occasions when a parent or legal guardian for the 16-year-old's care either cannot be reached or completely refuses to come to the Department facility where the juvenile is detained. In determining whether questioning should take place without the presence of a parent or legal guardian, UMOS should be guided by the following, which applies to all juvenile interrogations:

¹⁵ See Criminal Procedure Law §§ 140.20(6), 140.27(5), 140.40(5); N.Y. Fam. Ct. § 305.2.

¹⁶ The law requires that interrogations take place in spaces designated by OCA as suitable for the questioning of juveniles. Except for the 45th Precinct, all squad video interrogation rooms have been designated as suitable spaces for the questioning of juveniles by OCA.

¹⁷ N.Y. Fam. Ct. Act § 305.2(3) states that if the person legally responsible for his/her care is unavailable, then the person with whom the juvenile resides must be notified.

¹⁸ See *Matter of James W.*, 130 A.D.2d 753 (2nd Dep't 1987) (holding that juvenile's statements to police were the voluntary result of valid waiver of juvenile's rights; police questioned juvenile in specially-designed facility, in the presence of juvenile's father, and only after informing juvenile and his father of the *Miranda* rights.).

- Make every reasonable effort to contact the parent or legal guardian, and provide ample time for them to come to the Department facility. **Document such efforts.**¹⁹
- Determine if the questioning is necessary at the time; and
- Consider the apparent intelligence of the juvenile and the ability of the juvenile to understand *Miranda* warnings.

If the decision is made, based on the above factors, to interrogate a juvenile, the following is advised:

- A good faith attempt must be made to have a competent adult, other than law enforcement personnel, present during any questioning (e.g., a relative, clergyman, teacher, etc.); and
- Special care must be taken to ensure that the juvenile understands his/her rights and the effect of a waiver of those rights.

In any case where a juvenile is questioned in the absence of his parent or legal guardian, UMOS must be prepared to demonstrate that any confession was made voluntarily, and that the waiver of his/her rights was voluntary, knowingly, and intelligently made, and that prompt and repeated attempts to reach the juvenile's parents, or legal guardian, were made and properly documented.

III. CONCLUSION

The enactment of "Raise the Age" legislation creates a new body of law pertaining to the treatment of 16-year-olds in the criminal justice system. Members of the Service must follow with care the rules established for arrest processing, prisoner holding, parental notifications, and questioning for this age group.

UMOS are encouraged to contact the Legal Bureau at (646)-610-5400 if he or she has questions relating to this bulletin or the new law. For operational or processing questions, UMOS are advised to contact the Juvenile Crime Desk at (646)-610-5884.

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¹⁹ See, e.g., *In re Chaka B.*, 33 A.D.3d 440 (1st Dep't 2006) (holding that statement by juvenile to police was not rendered inadmissible at delinquency proceeding due to absence of parent or other relative during questioning; police made reasonably diligent efforts to notify a parent or other relative before questioning); *People v. Bonaparte*, 130 A.D.2d 673 (2nd Dep't 1987) (finding that police officer's failure to advise juvenile offender's mother of her son's *Miranda* rights did not deprive juvenile's right to due process since mother twice refused to come to police station on her own or to accept ride in police vehicle; court further holds that "[i]f we were to apply the greater protections afforded to juvenile delinquents we would reach the same conclusion."). See also N.Y. Fam. Ct. Act § 305.2(8) ("In determining the suitability of questioning and determining the reasonable period of time for questioning such a child, the child's age, the presence or absence of his parents or other persons legally responsible for his care and notification . . . shall be included among relevant considerations.").